163 US 697

TRANSCRIPT OF RECORD.

163-697

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 169.

THE MORSE ARMS MANUFACTURING COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 4, 1892.

(15,158.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 30, 1895.

1 In the Court of Claims.

THE MORSE ARMS MANUFACTURING COMPANY
vs.
THE UNITED STATES. } No. 14340.

I.—*Petition. Filed April* 12, 1884.

The claimant is a corporation duly organized under and pursuant to an act of the legislature of the State of New York passed February 17, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the acts amendatory thereto, and has its place of business in the city, county, and State of New York.

Letters patent of the United States numbered 15995, for improvements in breech-loading fire-arms, were granted to George W. Morse on the 28th day of October, 1856, for a term of fourteen years, and were extended for an additional term of seven years by an act of Congress entitled "An act for the relief of George W. Morse," approved March 11, 1872. Letters patent of the United States numbered 20503, for improvements in the alteration of muzzle-loading into breech-loading fire-arms, were granted to said Morse on
2 the 8th of June, 1858, for a term of fourteen years, and were extended for a further term of seven years on the 7th day of June, 1872. Letters patent of the United States for improvements in cartridges, numbered 20727, were granted to said Morse on the 28th day of June, 1858, for a term of fourteen years, and were extended for an additional term of seven years on the 29th day of June, 1872.

Before the 10th day of July, 1875, said Morse, for a valuable consideration, assigned and transferred to the claimant all the right, title, and interest granted by said several letters patent, and thereafter the claimant was the sole owner of the same until the expiration of their respective terms.

Since July 10, 1875, the defendants, with the consent of the claimant, have used the inventions described and claimed in said letters patent, numbered respectively 15995 and 20503, in the manufacture and alteration of rifles embodying said improvements, as follows:

Between July 10, 1875, and July 1, 1876, 15,414.
Between July 1, 1876, and July 1, 1877, 7,164.
Between July 1, 1877, and July 1, 1878, 13,173.
Between July 1, 1878, and July 1, 1879, 9,113, and
Between July 1, 1879, and Nov. 29, 1879, 10,000, amounting in the aggregate to 54,864 rifles.

The defendants thereupon became indebted to the claim-
3 ant on an implied promise for the reasonable value of the use of said improvements, which was the sum of $5 for each rifle, amounting in the aggregate to $274,320.

The defendants have not paid said sum of $274,320 nor any part thereof.

Since July 10, 1875, the defendants have, with the claimant's consent, used the inventions described and claimed in said letters patent numbered 20727 in the manufacture of large numbers of cartridges. The precise numbers so manufactured are not known to the claimant, but when ascertained will, with the permission of the court, be duly set forth in an amendment to this petition.

The defendants thereupon became indebted to the claimant on an implied promise for the reasonable value of the use of said last-mentioned invention, but have not paid the same nor any part thereof.

No assignment or transfer of said claim or of any part thereof or interest therein has been made except as herein stated, and the claimant is justly entitled to the amount herein claimed from the defendants after allowing all just credits and offsets.

No action has been taken upon this claim by Congress or by any of the executive departments of the Government of the United States. The claimant has always borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or encouraged rebellion against said Government.

4 The claimant demands judgment against the defendants for the sum of $274,320, and also for the value of the use of the invention described and claimed in said letters patent numbered 20727, hereafter to be ascertained.

ALFRED ELY,
Attorney for Claimant, # 25 Nassau St., New York City.

CITY AND COUNTY OF NEW YORK, *ss:*

Jacob F. Wyckoff, having been duly sworn, says that he is the president of "The Morse Arms Manufacturing Company," the claimant named in the foregoing petition, and that he believes the facts as stated in the said petition to be true.

JACOB F. WYCKOFF.

Subscribed and sworn before me this 10th day of April, 1884.
[SEAL.] H. D. INGERSOLL,
Notary Public, N. Y. Co.

5 II.—*Traverse. Filed April* 19, 1884.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and ha- not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Gov-

ernment, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney General.

6 III.—*Findings of Fact and Conclusion of Law. Filed June* 20, 1892.

This case having been heard by the Court of Claims, the court, upon the evidence, find the facts to be as follows:

Findings of Fact.

I.

A musket made by George W. Morse, under letters patent No. 15995, was presented by him to the War and Navy Departments of the United States during the year 1857. March 5, 1857, Col. Craig, chief of ordnance, wrote the following letter to Maj. Bell, commander of the Washington arsenal:

SIR: Mr. Morse, of Louisiana, will present at the arsenal a breech-loading rifle, which please cause to be tried, and report the result to this office, with your opinion as to the fitness of the arm for the military service. Maj. Bell reported that the arm, though complicated in its machinery, was worthy the consideration of the department, and were it not for its complicated machinery it would probably be as well suited to military as it certainly is to civil purposes.

August 12, 1857, an order was issued from the War Department directing a board of officers to assemble at West Point "for the purpose of making trials of breech-loading rifles, with a view to ascertain which arm of this description is best suited for the military service."

To this board Morse wrote a letter commending his gun. The board reported as their unanimous opinion that "the breech-loading rifle submitted by A. E. Burnside, of Rhode Island, is suited for military service." November 12, 1857, Morse wrote to John B. Floyd, Secretary of War, alluding to experiments made with his musket, and concluding thus:

Now, sir, I only await your leisure, and from your known knowledge of fire-arms confidently expect to prove to you the truth of my assertions, "that mine is the best gun in the world."

December 9, 1857, Mr. Floyd, Secretary of War, issued the following directions to the commander of the Washington arsenal:

The colonel of ordnance will direct Maj. William H. Bell to have a gun made at the Washington arsenal upon the plan of Mr. Morse's gun after either of the patents (which) have been exhibited, or a combination of them; the work to be executed under the supervision of Mr. Morse himself, if he chooses.

January 27, 1858, Morse was asked by Col. Craig, chief of ordnance, to send one of his rifles for the use of Lieut. Gen. Scott, with cartridges. March 5, 1858, the Secretary of War directed that 100 of the Morse gun be purchased at $40 apiece to be paid for in lots of twenty-five each.

In May, 1858, the Secretary of War asked the Committee on Military Affairs of the House of Representatives to recommend an appropriation of $100,000, to be used in altering old muskets and rifles into breech-loading arms.

7 The act of June 12, 1858, appropriated $20,000 for breech-loaders, of which, besides the amount paid Morse, $2,500 was paid to William Mont Storm for the privilege of altering 2,000 arms according to his plan.

February 26, 1858, Morse wrote to the "board of officers for the examination of altered United States arms" urging the use of brass cartridges, and stating that "I do not depend upon the gun for a tight joint at the breech, but upon the cartridge, which seals it perfectly, and is renewable after each discharge, so that it can never wear out."

August 6, 1858, the board of officers who had met at West Point reported to the Secretary of War that they had selected Morse's model for this reason: "Inasmuch as it differs from the others by including the new and untried principles of a primed metallic cartridge, which may, on actual trial, be found of advantage."

September 9, 1858, Morse wrote the Secretary of War authorizing him to alter 2,500 old arms on his plans for $5 each. This was accepted for 2,000 arms and the Secretary said (11th September, 1858):

Let Mr. Morse have an order for three United States flint-lock muskets, of the latest model, and for three United States percussion rifles, seven grooves, to alter after his plan, for patterns. When these patterns are ready let an order be given for the alteration, according to the pattern arms, of 2,000 muskets of the same model at either United States armory, as he may designate. * * * The arms so altered to be rifled and sighted at the armory, and Mr. Morse to have the privilege of superintending the process of alteration and to be required to state that the work is done in a satisfactory manner to him before the altered arms are issued for trial. * * * Let a written grant of the privilege to alter 2,000 arms at the rate proposed be obtained from Mr. Morse, payment to be made to him ($10,000) out of the special appropriation, when the agreement is signed, which agreement is to include all his patent privileges.

September 13, 1858, Morse said: "In consideration of the sum of $10,000, paid to me by warrant on the Treasury of the United States, I hereby grant, sell, and convey to the said United States the right and privilege to alter 2,000 of the muskets now belonging to the United States," according to his pattern.

February 6, 1860, Morse (and A. Anderson) proposed to the Secretary of War to change the order for 100 carbines at $40 each, and "instead of it to sell to the Government the right to manufacture

1,000 carbines according to Morse's invention for breech-loading arms, and according to the particular plan thereof which has been applied in the alteration of the United States rifles:" and they proposed to make the conveyance for $3,000, being at the rate of $3 on each gun. This proposition was accepted by the Secretary of War February 9, 1860. Thereafter the following license was given:

License.

This agreement, made this eleventh day of February, eighteen hundred and sixty, witnesseth: That, whereas an order was given on the 16th of March, 1868, by direction of the Secretary of War, to George W. Morse for one hundred guns of his invention, at forty dollars each, for the use of the United States, and which was agreed to by said Morse; and, whereas none of said guns have been yet furnished, and said Morse has now proposed to have said order changed and in place of it that the Government shall purchase from him, at the rate of three dollars each, the right to manufacture one thousand carbines, according to his, said Morse's, invention for breech-loading arms, and more particularly according to the particular plan thereof which has been applied in the alteration of the United States rifle, which proposal has been assented to by the Secretary of War:

Now, therefore, be it known that I, the said George W. Morse, for and in consideration of the premises, and of the sum of three
8 thousand dollars in hand, paid jointly to him and A. Anderson, who joined in the application to have the order for the one hundred guns set aside and this agreement to be entered into in place thereof, and the receipt of which sum of three thousand dollars is hereby acknowledged, do hereby grant, sell and convey to the Government of the United States of America the full right to manufacture, at any time or times it may determine, one thousand guns called carbines, or by whatever other name known, of his, said Morse's, invention of breech-loading arms, and of cartridge cases for the same, and more particularly according to the particular plan thereof which has been applied in the alteration of the United States rifle; it being fully understood that this is to convey all the patent rights of said Morse to his inventions of breech-loading arms and ammunition therefor, as described and secured in his patents, numbered 20503 and 20727, so far as regards the above-mentioned one thousand arms, and also the right to apply, as far as regards said one thousand arms, any and all improvements he has made and may make applicable to the same.

In witness whereof, I, the said Geo. W. Morse, have hereunto set my hand and seal, on the day & year first above written.

Witness—

And I, the said Anderson, have at the same time set my hand and seal.

Witness—The words "as described and secured in his patents,

numbered 20503 and 20707," being interlined between the 19th & 20th lines of the second page, before signature.

GEO. W. MORSE. [SEAL.]
A. ANDERSON. [SEAL.]

Signed and sealed in presence of—

WM. MAYNADIER,
Capt. of Ord.
JONAS T. KELLER.

U. S. PATENT OFFICE.

Received 13 & recorded 15 Feb'y, 1860, in Liber R^5, page 68, of Transfers of Patents. In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] PHILIP F. THOMAS,
Com'r of Patents.

Sixty of Morse's muskets were made prior to November 12, 1859. The Government paid Morse $13,000 under the agreements hereinbefore set forth.

II.

At the request of defendant's counsel the following facts are found:

In February, 1861, Morse wrote to "Jefferson Davis, President of the Confederate States of America," as follows:

In pursuance of my understanding with you respecting the machinery for arms * * * I shall have the satisfaction of knowing that my exertions and honest endeavors to benefit the Confederacy will be crowned with success.

In March, 1861, he wrote to the Secretary of War of the Confederate States of America as follows:

If success does not attend the efforts now being made for the establishment of a Southern armory, these arms can be manufactured in Europe or anywhere else at about the same cost as those of the ordinary kind. I shall be happy to make a trial of them before you at any time you may indicate.

P. S.—It seems to me that the adoption of a single plan of breech-loader, with one caliber, for both the army and navy, would be advantageous.

April 6, 1861, he wrote to J. C. Grubb & Co. relative to the manufacture of 1,000 of his breech-loading carbines for the State of Texas, to be made in Europe, saying:

I enclose you a circular in reference to this gun, and I doubt not that if I can get its manufacture under way that any number of them will be sold in the South, where some models of it have been in use for some time past by Major McCulloch, and shown all over the country.

9 July 18, 1861, he wrote the following letter:

RICHMOND, *July 18th*, 1861.

Hon. E. Pope Walker, Secretary of War, C. S.

SIR: In accordance with your suggestion, I submit the following as a list of machines which I hope to obtain for the purposes set forth in a letter from the governor of the State of Tennessee to his excellency President Davis:

1 trip-hammer, with such special tools for welding gun barrels as are at hand.
2 small planers.
1 screw machine.
1 cone machine.
2 small lathes.
1 profiling machine.
2 drilling do. with 3 or 4 spindles each.
8 milling machines.
1 rifling machine.
1 nut-boring do.
1 smooth do. do.
1 barrel-turning lathe.
1 punching press.
1 horizontal milling machine for ramrods.
1 old breech-screw-cutting machine.
1 old index machine.

It is the loan of these tools only which is asked for, the value for which may be fairly estimated at from eight to ten thousand dollars. There are several good reasons why the request should be granted, and one of them is, that under the representations of Gen'l Polk that it would be done, the State of Tennessee has purchased buildings and grounds for an armory.

Another is, that at Nashville workmen from Louisville and St. Louis are easily obtained to duplicate them and make more of the same kind.

Still another reason is, that the State has purchased large supplies of war material, and the Confederate government has not only already availed itself of a part of this in the form of percussion caps, but will want large supplies of powder from her mills. All of which is respectfully submitted for your consideration.

I am, sir, your ob't servant, GEO. W. MORSE,
Sup't Tenn. Armory.

April 11, 1861, Morse left Washington for Louisiana, where he remained throughout the war.

III.

In the year 1855 the said Morse filed in the Patent Office a caveat thus entitled: "Description of improvements in breech-loading guns and cartridges for the same for either cannon or small arms," which is made part of these findings.

Thereafter a patent, dated October 28, 1856, was issued to said Morse, which with the specifications, claims, and drawings (and disclaimer filed November 27, 1872) is made part of these findings.

This patent (No. 15995) was extended by statute (act of March 11, 1872) and expired November 29, 1879.

October 28, 1856, another patent (No. 15996) was issued to said Morse, which with the claims and specifications upon which it was issued are made part of these findings.

June 8, 1858, patent No. 20503 was issued to said Morse, which with the claims and specifications upon which it was issued is made part of these findings. This patent was extended by statute and expired June 7, 1879.

June 29, 1858, patent No. 20727 was issued to Morse, which with the claims and specifications upon which it was issued is made part of these findings. This was extended by statute and expired June 29, 1879.

In 1835, the following report was published in France; it does not appear whether it was published in this country:

34 year (No. 369).—March, 1835.

(Bulletin of the Society for the Encouragement of National Industry at Paris, 1835.)

Mechanical Arts—Fire-arms.

Report made by the Baron Séguier, in the name of the committee of mechanical arts, on sporting guns loading at the breech, presented by Mr. Lefaucheux, gunsmith, Street de la Bourse, corner of Colonnes, Paris.

For a long time it was known that the war guns called guns with forced balls had a longer range than the others, and yet very little affort had been made to give the same advantages to sporting arms loaded with small shot.

This was difficult; the only means of attaining this end was to load them with cartridges with the charge of shot separated from the powder by a diaphragm of a larger diameter than that of the gun. Such a cartridge could not be introduced and pushed to the bottom of the barrel without a great effort, and even in that case, without losing a part of the advantages sought for, the intervening body placed between the shot and the powder being thus compressed at the time of loading, would place itself beforehand in contact with the diameter of the arm. At the moment of the explosion a wad thus moulded would have a very little superiority over ordinary wads.

But this even could not be, inasmuch as the barrel of a sporting gun, in order to carry the shot properly, should be at its orifice slightly smaller than at its breech. To solve the problem, the cartridge, prepared as we have just said, must be placed in the chamber of the barrel of a diameter a little larger than the barrel, and connected with it by the section of a cone. These arms can, therefore, only be loaded at the breech; this was what several armorers well understood when the first systems of sporting guns with movable breeches, called broken barrels, were thought of.

Our purpose, gentlemen, is not, on the occasion of this report, to retrace here at length, the complete history of the modifications

which the sporting arms have already undergone; we will limit ourselves to saying that it was to a gunsmith by the name of Pauly, to whom is due, in our day, the introduction into commerce of these kind of arms, which had heretofore appeared more curious than useful.

The guns which we call to your attention today were presented by an armorer for a long while employed in the workshops of Mr. Pauly; this artist seemed to have at heart the desire of bringing to the highest possible point of perfection this kind of gun, on which he worked from the beginning.

M. Lefaucheux has exposed under our eyes the drawings of the different modifications through which he carried the Pauly invention to bring it to the point where you now see it. Experience has furnished him successively the indications of the practical inconveniences which each one of the preceding modifications carry with it; and it is today that experience has, for a sufficient length of time, sanctioned these last efforts that he calls upon you to appreciate their merits.

The Lefaucheux gun is composed of a barrel fixed by a tangential hinge at its circumference to a piece of iron folded in a square, against which comes and rests its lower extremity; the barrel is firmly held in contact with that piece, which serves it as a breech, by the aid of a drawing bolt in the form of a T, the head of which engages itself between two hooks soldered under the barrel. The piece forming a breech is made to function at the same time as tipping piece, and comes and inserts itself ordinarily in the wood between the two plates, like the prolongation of the tipping piece. The head of the T is constructed in such a fashion as to fill the double office of drawing to a joint the barrel against the piece forming the breech when it is desired to close the gun for firing, and to raise lightly the barrel to overcome the adherence of the pieces, one against the other, when it is required to introduce a new cartridge.

Sometimes it is a particular lever, at other times it is the handle of the underguard which serves to put the T in motion. In this gun the fire is put to the powder in the ordinary way by the percussion of the hammer on the cone (called piston) screwed into the barrel.

In examining this arm with attention, you inquire, perhaps, why the hinge which unites the barrel to the stock has thus been placed under the barrel, and why the pulling is not done in the axis? This reflection presents itself to our own mind. We should anticipate it on your part in communicating to you the motives which caused Mr. Lefaucheux to act in this manner. Pulling in
11 the axis to operate the juxtaposition of the extremity of the barrel against the piece forming the breech can only be obtained by means of side plates, but experience has demonstrated that the plates very soon undergo, by the action of the fire, a very remarkable alteration.

This phenomena, observed in the guns with plates, is curious

enough for you to permit us to entertain you on the subject for an instant.

In these kinds of guns, after even a short service, a groove is soon observed, corresponding to the point where the barrel terminates. This scooping, which ends by becoming quite deep, operating in either steel or iron case-hardened, which is harder still since its temper is not reduced, is it the result of a mechanical action of the gas in its flight, or, rather, is it not the product of a chemical action, by the combination of the sulphur of the powder with the iron? This, gentlemen, is the case in point which we have at heart to make clear. After a careful examination we have found that the corroded point acquires a hardness very superior to all the other points of the plate. We have verified that such an alteration does not show itself, or at least in a manner quite imperceptible, upon the blade of brass inserted between the barrels, to oppose itself to the communication of the fire from the one to the other. This blade, under the most unfavorable conditions, lasted only an extremely short time when it was of steel, and it was this experience and the observation which indicated to Mr. Lefaucheux the substitution of brass for steel.

The good condition of the intermediary blades of brass in the guns, where the side plates were already deeply furrowed, leaves us no longer in doubt as to the cause of that deterioration.

Without setting aside the influence of the mechanical action, we attribute it principally to the chemical combination which we have just described.

Mr. Lefaucheux could then have advantageously lined the side plates with brass, but he preferred attacking the evil at its root; he has endeavored to disembarrass himself entirely of the side plates, and it is in this manner, gentlemen, that he has been led to avoid this last disadvantage by means of the arrangement which he submits to you.

This simple arrangement, which renders the manœuvring of the gun simple and commodious, ought, it seems, finally to have completely satisfied the sportsman; but it was otherwise; in proportion as the arm neared its perfection the exigencies increased; being unable to find fault with the mechanism, they complained that it did not overcome the complete loss of gas.

This loss of gas, according to the belief of the greater number, offered the double inconvenience of diminishing the range and the blacking of the fingers; as to ourselves we can attribute to it only this last inconvenience.

Although very slight, this last reproach had a foundation. Mr. Lefaucheux, desiring to satisfy in all respects the many sportsmen who honored him with their confidence, put himself again to the task, without ever despairing of success; therefore, to surmount a last obstacle, he was induced to apply to the guns the happy application of the closing principle of hydraulic presses. We desire to speak of that punched-up leather, the edges of which are applied against the sides of a vase, with all the more force when the liquid

which it contains finds itself more compressed, and has a greater tendency to escape.

You conceive, gentlemen, that in adopting this principle of closure for guns, as there is no question of the opposing of the escape of a liquid but that of inflamed gas, it was proper to modify the material of the stopper; therefore it is not a cap of leather, but a bottom of thin brass with which Mr. Lefaucheux caps his cartridges. The flexible edges of this hat, which has the form of a large capsule, which, dilating at the moment of the explosion, and applying itself to the sides of the barrel with such exactness, that henceforth the slightest escape of gas becomes impossible.

This method, which is as simple as it is ingenious, and which an observing mind has known how to borrow from the hydraulic press, to make of it a happy application, deserves to fix your attention. We look upon it as one of the most useful improvements applied for a long time to sporting arms which are loaded at the breech.

This, according to our opinion, is a true service rendered to the entire art of gun-making; by its use the combinations of closures, which are less exact, will be safe from the escape of gas, and henceforth it will not be the exactitude but only the solidity of the closure which renders the problem of the manufacture of arms with broken breech difficult to solve.

Mr. Lefaucheux believed he should secure to himself the privilege of the use of this powerful auxiliary of a *closed* by means of a patent of invention and a patent of improvement.

We have just given you a concise description of the Lefaucheux gun; we have discussed and explained its construction; we have made known to you how Mr. Lefaucheux had found in the resources of his inventive mind the ingenious means of surrounding the obstacles as fast as they presented themselves; we should now speak to you of the use of his arm and its results.

12 Mr. Lefaucheux has requested that we should satisfy ourselves of the good effects of his gun; not shrinking from any test, he has himself solicited us to make comparative experiments; we will submit the results for your inspection.

Official report of the comparative experiments made between several guns of different systems, at the request of Mr. Lefaucheux, by Messrs. Olivier and Séguer, commissioners of the Society of Encouragement, in the presence of Messrs. Lefaucheux, Justin, and others, the firing by Mr. Gosset.

(NOTE.—The experiments were made on several papers—blue paper, partly sized, pinkish-white paper, gray paper, unglazed. Each series of trials, however, took place for all of the guns on the same kind of paper and under similar circumstances.)

First trial.—Pinkish-white paper.

			Penetration.
Lefaucheux gun.—Powder,	70 grains,	shot No. 4, 1 oz....	37 sheets.
Second shot. Powder,	do.	do. ...	49 do.
Pottet gun.	55	do. ...	41 do.

The comparisons being impossible, as the charges were unequal, in the following shots they were brought to the same weights. To obtain the same quality of powder the Lefaucheux gun made use of the cartridges intended for the Pottet gun. We should cause you to observe that those cartridges entered more easily in the Lefaucheux gun than in that of Pottet, for which they had been made.

Second experiment.

Shot No. 4, 1 oz.; powder, 55 grains; blue paper. Lefaucheux, 25 sheets; Pottet, 31 sheets.

The cartridge was rolled in a band of paper, so as to enter into the Lefaucheux gun with less play.

Pinkish-white paper.—Lefaucheux, 46 sheets; Pottet, 50.

Gray paper.—Lefaucheux, 71 sheets; Pottet, 74.

Lefaucheux, 51 sheets.

In this experiment the quires of paper were turned over, and Lefaucheux fired on the paper which had already received the shot of Pottet. The second shot was fired by Lefaucheux on new paper.

Third test.—Comparison of the Lefaucheux gun and the Robert gun.

Gray paper.—First shot fired by the Robert gun, loaded with loose ammunition without a cartridge, 55 grains of powder, 49 sheets.

Second fire, with cartridge, 52 grains of powder, 66 sheets.

The Lefaucheux gun, loaded with the powder and shot of the Robert cartridges taken to pieces, so as to make them into the Lefaucheux cartridges, 52 grains, 73 sheets.

Third fire of the Robert gun, fired on paper which had already been shot, 73 sheets.

Second shot, Lefaucheux gun, on paper also turned, 73 sheets.

We think it necessary to point out in our experiments this circumstance of the paper which had already been struck, because the necessity of separating the sheets to count them destroys their juxtaposition—they become more difficult to penetrate.

The object of the fourth test is to ascertain the best mode of ignition, either upon the barrel or behind it.

These experiments were made with two guns of the Lefaucheux system, but by a different arrangement as regards the ignition.

Gray paper.—First fire, inflammation in the back part and in the bore of the gun, 70 grains powder, 71 sheets; second, ignition on the barrel, same amount of powder, 72 sheets.

From all these experiments, one must conclude, as a general rule, that it is a grave error to suppose that the ranges are more useful when the charges of powder are heavier. Remark, gentlemen, that we use the word utility, because we do not pretend to say that the distance to which the projectile is thrown is not increased with the force of the power which gives it its movement.

We have said useful because it is demonstrated for us, and the experiments with which we have just entertained you proves it,

that the penetration is much less when the velocity goes beyond a certain limit; it can be very well understood when one reflects that the penetration of a body is all the more difficult when the time during which the separation of the constituent molecules has
13 been incited is in itself the shortest. It is in this manner, gentlemen, that the fact, otherwise so strange, is naturally explained, that a ball fired close up, flattening itself on a board, will pierce it through and through when fired from a distance.

We have rigorously established the fact that the Lefaucheux gun offers no more escape of gas, a condition to which some sportsmen attach a very high value, but as to ourselves we believe it to be of very much less importance than is generally supposed. The limits of this report does not permit us to develop in this respect our opinion; for its foundation it has a new mode of viewing the phenomena that accompany the ignition of the powder. We believe that up to this date the chemical phenomina, such as the production of a gas, have not been sufficiently discriminated from the purely mechanical phenomena, such as the useful application of a generated force.

It will be sufficient to say that the experiments with which we have been entertaining you come themselves to our support, since a gun of the Robert system—that is to say, in which there is a sensible escape of gas, has obtained a range equal to those guns which leave no other escape for the gas, except through the barrel itself. We are pleased, therefore, to accord to the Lefaucheux gun every advantage shown in its practice. We note, in the first place, the solidity of its closure, tested several times by the simultaneous explosion of the double charges placed in each barrel; and then the facility with which it is loaded, the small amount of cleaning necessary which it requires; its cartridges, surmounted by their capsules, being withdrawn almost entire after the explosion, preserving the chamber from any fouling; with regard to the barrel, the forced wad which passes through it at each explosion cleans it, each time, of the smoke of the preceding fire, and so well that after a considerable number of fires this gun is as fit for use as at the moment when it was first put into use.

These properties render the facility of its being taken apart, and of its being cleaned of very little importance; nevertheless, as Mr. Lefaucheux still claims for the gun, to which he gives his name, the merit of simplicity of construction, we believe that we give proof of impartiality in stating in favor of this report a comparative table of the number of pieces which compose the guns of the different systems furnished by Mr. Lefaucheux, acknowledging, as to ourselves, that the lesser figure is in favor of the Lefaucheux guns. The experience of Mr. Lefaucheux has produced its fruits, and, what completely justifies the praises which we accord him, is the public favor which he has so well known how to obtain, the best touchstones in matters of industry. We have under our eyes an album containing a considerable number of satisfactory attestations, given by the sportsmen who have made use of his guns. The inspection

of commercial books have, by the importance of their sales, corroborated these declarations.

We have, for some length of time, occupied your attention, and nevertheless we have yet only spoken of the improvements applied to sporting guns. The inventive mind of Mr. Lefaucheux has actually directed itself towards the modifications to which our war guns could be usefully subjected, which are less improved than those of some other European powers, of Sweden for instance; but has Mr. Lefaucheux reflected well upon the extent and the difficulties of the task which he imposes on himself? He will have to struggle against fixed habits, and then attack, one by one, the arrangements which have been prescribed by the times, the numerous vices of constructions which they conceal and which defy the judicious critics of moderate practice, under the auspices of a learned theory. But we trust to our colleague, Mr. Olivier, the charge of speaking to you of the labor of Mr. Lefaucheux in this respect; we mention them here briefly, only in support of the conclusions which we have the honor to submit to you in the name of the committee of the mechanical arts.

We therefore propose to you to return the name of Mr. Lefaucheux to the commission of medals, so that he may receive from the society one of those honorable distinctions which it holds in reserve for encouraging persevering efforts, and recompense useful labors, and crown happy inventions.

Approved in session the 18th February, 1835.

(Signed) BARON SÉGUIER, *Reporter.*

Description of the Sporting Gun of Mr. Lefaucheux, which Loads at the Breech.

The Fig. 1, pl. 616, represents the gun put together with all its pieces.

Fig. 2, double-barrelled gun, the barrels lowered and ready to receive the cartridges.

Fig. 3, longitudinal cut of the same, drawn on a double scale.

Fig. 4, the key, seen in elevation and in plan.

Fig. 5, the T seen in elevation and in plan.

14 Fig. 6, screw of the T in elevation and underneath.

Fig. 7, cartridge supplied with its culot.

Fig. 8, culot, front view.

The same letters indicate the same objects in all the figures.

a a, the barrel of the gun.

b b, hooks applied under the chamber, between which a kind of bolt called T engages itself.

c, pin cut in a bevel and used to hold the T.

d, cone or nipple, applied on the barrel to receive the priming cap.

e, key placed under the tipper; it is turned horizontally from left to right, so as to disengage the hooks and lower the barrel; in the square of that key enters the lower extremity of the T, which is held there by a screw.

f, bolt called T, of which the part f^1 is cut in a bevel, so as to slide against the end of the pin *c*, cut in an inclined plane; a spring which is not visible in Fig. 3, but which is indicated in Fig. 12, rests against the T and holds the key apart whilst the gun is being charged; *g*, a screw which fixes the key against the T.

h, ring which surrounds the T; it is hollowed on one part of its circumference, so as to receive a little blade fixed at the bottom of the tipper; *i*, piece of iron folded in a square called tipper, solidly fixed to the gun; on its extremity the barrel turns.

j, pin, which passes through the hinge *k* of the tipper, and serving as center of motion to the barrel.

k, hammer; *l*, under guard; *m m*, triggers; *n*, sight; *o*, cartridge; *p*, brass culot of the cartridge.

Management of the gun: The gun is seized with the right hand; the left hand is passed under the barrel, and you bear against the key, which turns at that moment and disengages the hooks *c c*. The barrel at once lowers itself and shows its open chamber. In this position, indicated by the Fig. 2, the key remains in place and cannot fall again, being held back by the spring which rests against the T. Whilst the gun is held by the left hand the cartridge is shoved into the barrel; then the barrel is raised, the key is put in place, as is seen in Fig. 1st, and the gun is loaded. There remains nothing more to be done but to cap the cone *d'* with a brass capsule containing the priming of fulminate powder and to cock the hammer; this hammer in falling sharply against the capsule crushes it and inflames the fulminate powder, which sets fire to the charge by traversing the cartridge. After the load has been fired the barrel is lowered, the culot is withdrawn, and you load as has been said before.

The cost of the manufacture of the Lefaucheux gun is from 150 to 350 franc; those made in Paris are sold at 550 francs, with twisted barrels, and 650 francs with Damascus barrels.

Letters patent, numbered as follows, were issued at the dates set forth and to the persons named, upon drawings, specifications, and claims which are made part of these findings:

No. 828 (French), M. Lafaucheux, May 2, 1845.

No. 203 (United States), Henry C. Ray, May 22, 1837.

No. 7172 (French), Pierre François Desnyau, May 4, 1840.

No. 3601 (French), M. Chaudun, December 9, 1847.

No. 2746 (French), M. Loron, January 4, 1847.

No. 6139 (United States), David Minesinger, February 27, 1849.

No. 635 (English), Charles Pryse and Richard Redman, November 4, 1852.

No. 9058 (French), M. Gastinne, March 5, 1853.

No. 2778 (English), Auguste Loradoux Belford, November 29, 1853.

No. 4626 (English), Jean Samuel Pauly, May 14, 1816.

No. 11127 (French), Messrs. Palmer and Bidault, June 3, 1854.

Reissue No. 279 (United States), Horace Smith and Daniel B. Wesson, October 10, 1854.

No. 12446 (French), M. Pottet, February 26, 1855.
No. 8829 (French), M. Beatus Beringer, December 31, 1834.

IV.

In the Springfield gun (the official small arm of the U. S. Army) the breech block is solid and fills all the breech chamber except in this: It does not bear against the rear end of the chamber, and that end of the chamber is not intended to take up any part of the recoil except upon the breech pin alone, nor does the forward end of the breech block when shut come quite in contact with the head of the cartridge.

15 The breech block is fastened by a hinge at its forward end to the top of the barrel. The hinge pin is of less diameter than the hinge holes through which it passes, thus permitting some slight movement or play in the hinge so that the pin may not be cut during recoil.

There is a recess at the head of the breech pin; this recess is somewhat concave in form, and into this the cam latch locks; the shaft of the cam-latch hinge is smaller than the hinge holes through which it passes, and this shaft extends horizontally beyond the barrel, terminating in a handle or thumb latch, as shown in the Allin gun; when the breech lock is shut and locked, this handle lies under the angle of the hammer, and is so arranged that with a hammer in the third or lowest notch (or entirely down), the breech block cannot accidentally unlock and open. In locking or unlocking the cam latch, this handle turns across the head of the firing pin, and thus operates to prevent premature firing, as in the Allin gun.

In firing, the breech block sets back under the force of the recoil; the loose hinge at the forward end gives play there; the loose hinge of the cam latch gives play at that point, and the recoil is transmitted through the breech block to the cam latch, with the head of which it comes in direct contact, and then through the cam latch to the head of the breech pin. By reason of the small diameters of the respective pins or shafts of the two hinges, as compared to the hinge holes through which they pass, no strain is brought upon these hinges by the recoil.

Extraction and ejection of cartridges was thus performed in all Springfield guns, beginning with the model of 1868 and continuing since.

Extraction.—By an extractor plate swinging on the hinge pin and struck above its center of motion by the forward end of the breech block near the completion of its movement in opening.

Ejection.—By accelerating the movement of the extractor by means of a spiral ejector spring, which surrounds the stem of the ejector spindle, and bears against the bottom of its hole in the receiver at one end and against the head of the spindle at the other end. When the extractor is revolved by the opening of the block, the ejector spring is compressed by the ejector spindle, the point of which rests in a cavity in the back of the extractor above its axis of motion. The continued revolution of the extractor

finally brings the prolongation of the ejector spindle below the axis of motion; as soon as the center is passed, the sudden release of the ejector spring causes the ejector to rapidly rotate about its axis, and to carry the empty cartridge shell against the beveled surface of the ejector stud, by which it is deflected upward and thrown clear of the gun.

Between July 10, 1875, and November 29, 1879, defendants manufactured new rifles of this model or changed old rifles to this model; the number so manufactured or altered during said period was 54,864.

V.

The following models of guns were examined by the court during the trial of this cause and are made exhibits herein: The model filed in the Patent Office as showing the construction described in patent 15595; the Morse gun, captured during the late war; the Springfield rifle, models of 1866 and 1873; the Winchester repeating rifle.

16

VI.

Plaintiff is a corporation organized under an act of the legislature of New York of February 17, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the acts amendatory thereto, has its place of business in New York city, and is the owner, by assignment made prior to June 10, 1875, of all the right, title, and interest granted by said hereinbefore-recited letters patent to said Morse until their expiration.

VII.

A reasonable royalty for the use of the device claimed in claim 1, patent 15995, if used by the Government, as contended by plaintiffs, for the period covered by the action, *i. e.*, prior to the expiration of the patent, and not longer ago than six years before this action began, would be $1 per gun.

A reasonable royalty for the use of the device claimed in claim 3, patent 20503, if used by the Government, as contended by plaintiffs, for the same period, would be 25 cents per gun.

Conclusion of Law.

Upon the foregoing facts the court find as conclusion of law that the petition be dismissed.

IV.—*Opinion of the Court.*

DAVIS, J., delivered the opinion of the court:

In 1855 George W. Morse filed in the Patent Office a caveat which he entitled a "Description of improvements in breech-loading guns and cartridges for the same, for either cannon or small arms."

Speaking of the gun he said that the barrel should be so constructed that the gun could be opened and closed at the breech by a movable breech piece "which does not necessarily fit tight into the bore of the breech of the gun, but only to remain firmly in its place when the gun is in proper position for firing." He proposed in this caveat that what he named "the cartridge or breech-pin (if it should be made to enter the gun) should be so constructed of metal, or combination of other materials behind the powder, that by the explosion of the powder it will expand and perfectly fill the bore of the gun behind as the minie-ball fills the cavity of the gun by the enlargement of the after part of the same by the explosion of the powder." He proposed that cartridges having a leaden case should be provided for his gun, the cartridges to be in any form consistent with the principle which he thus claimed "although it (the cartridge) or the breech pin may enter the gun loose, yet the effect of the explosion will be to render the gun perfectly tight behind the powder."

This caveat was followed by application for letters patent upon a gun and cartridge. In the Patent Office the application was separated and two patents were issued in the year 1856, the one, No. 15995, upon the gun, the other, 15996, upon the cartridge. The first of these patents was extended by act of Congress and expired November 29, 1879; the second (No. 15996) expired October 28, 1870. This action was begun April 12, 1884. The statute of limitations, therefore, runs against and bars any possible claim under this second patent.

17 The case turns primarily upon claim 1 in patent 15995, which reads as follows:

1. Inserting the rim N, or its equivalent, without contact into the chamber O, substantially in the manner and for the purpose described, contact being obtained through the medium of a cartridge case.

This claim is thus construed by one of the counsel for the plaintiff:

The claimant asserts that George W. Morse, the grantee of letters patent numbered 15995, was the lawful patentee of a device for sealing a breech joint of a breech-loading gun, purposely made open, by the expansion of a yielding metallic cartridge case, purposely made to fit loosely in its chamber.

Another of plaintiff's counsel states the scope of this patent in argument substantially as follows: Morse discovered a method or art by which a breech block, so constructed as to be free in operation under all circumstances, shall be automatically sealed at the moment when the use of the gun imperatively requires a close connection between the breech block and the gun barrel. Upon either statement the claim is for a broad device which shall practically cover subsequent inventions for sealing loose-jointed breech-loading military fire-arms by an expanding metallic cartridge.

In view of this contention it becomes necessary to examine the state of the art in the year 1856, when this patent was issued.

The first form of fire-arm was the breech-loader; but, as the im-

perfect fitting of the breech mechanism permitted the rearward escape of gas and flame, the muzzle-loader was adopted and continued in practical use until the close of the last war; meantime, and for many years, inventors had been searching for an efficient gas check capable of practical application to a military breech-loading musket. At first all efforts were directed to the manufacture of a mechanism which by the close fit of its parts should attain the desired result. Many devices of this kind were invented. None (so far as appears) had much practical value unless possibly in light sporting arms. The reason is plain. The carefully adjusted breech mechanism was apt to become inexact (and might become dangerous) through wear, rust, or dirt. An absolutely mechanically correct adjustment of the parts was, in theory, possible, but in practice the slightest injury to the gun, the least rust, or the presence of sand or earth rendered it inefficient and sometimes dangerous.

Long before 1856 inventors had recognized the necessity of a comparatively loose mechanism in the breech block, combined with a sufficient gas check through the expansive cartridge, if practical efficiency in this class of fire-arms was ever to be attained. Several patents are referred to in the findings of fact which show the endeavor of small-arms inventors in this century. A citation or two, by way of illustration, may not be amiss.

In 1835 the Society for the Encouragement of National Industry in France issued a bulletin headed "Mechanical arts—fire-arms," being a report made by Baron Séguier. This report is set forth in the findings, and from it we make only the following excerpts. Alluding to the loss of gas, which offered (it was said) "that double inconvenience of diminishing the range and blacking the fingers," the report proceeds (we quote from translation):

> Mr. Lefaucheux, desiring to satisfy in all respects the many sportsmen who honored him with their confidence, put himself again to the task, without despairing of success; so, to surmount a last obstacle, he was happily led to apply to the guns the
> 18 closing principle of hydraulic presses; we speak of that punched-up leather whose edges rub against the sides of a vase with all the greater force as the liquid which it contains is the more compressed and has a greater tendency to escape.
>
> You understand, gentlemen, that in adopting this principle of closure for guns, as there is no question of preventing an escape of liquid but of burning gas, it was proper to modify the material of the stopper, therefore it is not a cap of leather, but a bottom of thin brass with which Mr. Lefaucheux caps his cartridges. The flexible edges of this hat, having the form of a large capsule, dilates at the moment of explosion, and rubs tightly against the sides of the barrel with such exactness that the slightest escape of gas becomes impossible. * * * We look upon it as one of the most useful improvements applied for a long time to breech-loading sporting arms.
>
> This, according to our opinion, is a true service rendered to the entire art of gun-making. By its use the least exact breech closures are safe from the escape of gas, and henceforth it will not be the exactitude, but alone the strength of the closure which shall render

the problem of the manufacture of arms with broken breech difficult to solve.

Nearly twenty years before this (in 1816) Pauly had taken out his English patent for what he termed "apparatus and arrangements for discharging fire-arms by means of condensed air, also cartridges applicable thereto." His description, which is long, contained the following paragraph:

Having described the various forms and constructions which I give to cannon or other large arms for the purpose of loading or charging them at the breech or butt end, I shall in the next place describe my culot, plug, or cartridge stopper, which is an essential part of invention, which must be used with any or all the constructions of cannon, which have hereinbefore been described or mentioned by me, when the same are to be fired or discharged. The great obstacle to the use of large arms, loading at the breech, has hitherto been the difficulty of producing an air-tight or perfect closure between the movable breech and the body or remainder of the gun; and if the efforts of the explosion can at all make way into this joint or closure, the construction becomes dangerous, inasmuch as the opening will become larger, and eventually the moving breeching may be blown away or torn from its situation. This effect will entirely be prevented by the adoption of my culot, plug, or cartridge stopper, which is so placed in the gun as to come between the charge of gunpowder and the movable breech in all cases, and is formed of lead, copper, or such other ductile material as will give way to the explosive force of the charge, and so formed and situated that by yielding or giving way it will completely and effectually cover and close up the joint or joining between the movable breeching and the gun itself.

Here, then, Pauly recognized the necessity of a gas check between the "movable breech and the body or remainder of the gun," and proposed to furnish it by means of a cartridge "formed of lead, copper, or such other ductile material" as should yield under explosion and seal the joint. Other citations might be made, but they seem unnecessary.

The state of the art in 1856 was not such in our opinion as would permit a patent to issue covering so broad a claim as that made by plaintiff's counsel in this case. The advantages of loose breech mechanism were known when Morse applied for his patent; the metallic cartridge as an invention was old, although practical difficulty had been encountered in manufacturing it; the use of a cartridge as a gas check was by no means a novel idea. It was not open to Morse in 1856 to patent every "device for sealing a breech joint of a breech-loading gun, purposely made open by the expansion of a yielding metallic cartridge case, purposely made to fit loosely in its chamber;" quite the reverse; this idea had been disturbing inventors for many years; Morse came to the Patent Office limited to some specific mechanical device which should solve the long-studied problem, and he must be held to the one described in his application. Morse was by no means the first in the field, and therefore

he is not entitled to the very liberal construction which is here asked.

19 The claim upon which plaintiffs rely (the first in patent 15995) is on its face a narrow one, limited to a specific device; they, however, contend that as the patent was issued under the act of 1836 the question is (to quote from the brief) "whether in his specification as a whole, including the claim, this device was particularly specified and pointed out as his own invention for which he demanded the protection of letters patent."

Without deciding whether this contention as to the law is correct we turn to the specifications and find the invention described as a "new and useful breech-loading gun;" this gun to be so constructed that he could "blow through it or run water through it with facility, but when the charge is in it becomes comparatively air and water tight, because I use a cartridge case which seals the breech joint, both as to powder and the priming." Here nothing novel is described as a loose-jointed mechanism was known, and the use of a cartridge as a gas check was known; the kind of cartridge was not specified; neither was the combination of the two as a broad device then open to a patent. Further on he describes the mechanism which he afterwards "claims" as his invention in the form we have seen. Safety in the gun, and the fact that water will not impair its efficiency, appear from this specification to have been Morse's main objects.

Another patent, granted to Morse the same day (October 28, 1856), did cover a metallic cartridge intended to be used as a gas check, but that patent expired in 1870; because of the statute of limitations no recovery can be had in this action prior to 1878; therefore no rights under this patent can be urged here. Nor can the cartridge patent be imported into the patent for the gun. A claim for a system founded upon two patents cannot be sustained where one of the patents has expired by limitation.

The specific device described in the specification and claim of patent 15995 does not appear in the Government gun. (Morse Arms Company *vs.* Winchester Arms Company, 33 Fed. Rep., 170.)

Patent 20503, issued June 8, 1858, after being extended by statute, expired June 8, 1879; it contained a claim for a cartridge-extractor, and this extractor, or its equivalent, it is contended, is in the Springfield gun. The claim is as follows:

Third. The construction and use of the lever, when arranged substantially as described, for the purpose of retracting the cartridge case.

Under this and the specifications set forth in the findings counsel urge the broad claim for a lever when the toe is in front of the flange, no matter how operated. We have discussed the question of cartridge-extractors very fully in the case of the Berdan Firearms Manufacturing Company. The extraction of cartridge shells by leverage was not new in 1858, and Morse, in this patent, as in the earlier one, must be confined to his specific invention and to his use of a lever for pushing or pulling out a cartridge from a gun

barrel. Bourcier's patent (1847, 1848, and 1852), Gastinne's patent (1853), Belford's (1853), and Hick's (1857), all set forth in the findings, sufficiently show that the automatic or mechanical extraction of cartridges did not originate with Morse and that he was not the first to use a lever whose short arm should engage the forward side of the flange. Morse must in any event be limited to the specific device described by him, and this device does not appear in the Springfield rifle.

Petition dismissed.

20 V.—*Judgment of the Court.*

THE MORSE ARMS MANUFACTURING COMPANY
vs.
THE UNITED STATES. } No. 14340.

At a Court of Claims held in the city of Washington on the 20th day of June, 1892, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant be dismissed.

BY THE COURT.

21 VI.—*Application of Claimant for and Allowance of Appeal.*

THE MORSE ARMS MANUFACTURING COMPANY
vs.
THE UNITED STATES. } No. 14340.

From the judgment rendered in the above-entitled cause on the 20th day of June, 1892, in favor of the defendants, the claimant, by its attorney, on the 13th day of September, 1892, makes application for and gives notice of an appeal to the Supreme Court of the United States.

H. E. PAINE,
Claimant's Attorney.

Filed September 14, 1892.

Allowed in vacation September 30, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

22 In the Court of Claims.

THE MORSE ARMS MANUFACTURING COMPANY
vs.
THE UNITED STATES. } No. 14340.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of

the judgment of the court dismissing the petition, of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this fourth day of October, 1892.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 15,158. Court of Claims. Term No., 169. The Morse Arms Manufacturing Company, appellant, *vs.* The United States. Filed October 4th, 1892.

163 US 697

Supreme Court of the U.S.
FILED
APR 18 1896
JAMES H. McKENNEY,
CLERK.

163-697

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 169.

THE MORSE ARMS MANUFACTURING COMPANY,
APPELLANT,

vs.

THE UNITED STATES.

BRIEF ON BEHALF OF APPELLANT ON MOTION FOR CONTINUANCE.

JAMES A. SHILTON,
Counsel for Appellant in this Motion.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 169.

THE MORSE ARMS MANUFACTURING COMPANY,
APPELLANT,

vs.

THE UNITED STATES.

BRIEF ON BEHALF OF APPELLANT ON MOTION FOR CONTINUANCE.

General Duncan was familiar with the Morse patents from 1870, when he himself, as Assistant Commissioner of Patents, refused the extensions on the grounds stated in my affidavit. He was employed in the various extension proceedings after they were commenced, under the act of Congress, in the early part of 1872, till some time in the year 1874, during which time the prior state of the art was brought forward, as shown in England, France, and other countries, in the several applications for extensions by the examiners, and made studies of the prior state of

the art so far as it could be found in the Patent Office records. He was also employed at frequent intervals from 1874 down to the time of his death in proceedings and litigations in reference to these Morse patents, and, in view of these opportunities, was better qualified to deal with this case than any other man, because he had had experience that could now be obtained by no man, even by years of study.

It is in one respect for this reason that it has been found impossible to find and engage a substitute within the period of time elapsed since the death of General Duncan.

The other attorneys and counsel who have become partially familiar with the Morse cases and inventions, especially Judge Benjamin R. Curtis, Benjamin F. Butler, Thomas J. Durant, and Judge Emott, have died meantime, while the Government was delaying the Morse cases in the Patent Office and in the Court of Claims, and they have left no substitutes or capable successors as counsel.

Furthermore, death has also removed some of the principal owners of the stock of the Morse Arms Company, and their estates are in process of distribution or in the midst of entanglements. Time and delay have affected the standing and ability of others to protect the company. The stock of others is locked up in other ways, and ever since the death of General Duncan, owing to the absence or death of trustees of the company, it has not been found possible, after continued effort, to have a single meeting of the trustees or stockholders of the company to even consider the situation of its affairs. Of these last-mentioned facts I am aware, because, having been consulted since General Duncan's death, I have taken part in the effort to untangle

the affairs of the company so that it might be able to deal with the appeal at this term, but without success.

Further, this field of invention—breech-loading guns—is so large, peculiar, and important that to master and understand or qualify one's self adequately to deal with this invention in breech-loading guns actually requires almost as much time as most men give to the acquirement of a liberal education. Few ordnance officers even, if any, have been able to master the subject. How inventors struggled for hundreds of years with what was only accomplished in a moment of inspiration by Mr. Morse in our time, and years after he had, in his youth, abandoned the breech-loading gun as a practical possibility, lawyers cannot master and understand in months. For that a longer time is required, if superficiality of view and grasp are to be avoided and the Court is to be assisted adequately in the disposition of the case.

My own experience with these inventions, in acquiring a knowledge of them and of their relation to the art, as well as my experience in training other lawyers and experts, in the Patent Office and out of it, including the Ordnance Department and the Frankfort and Springfield armories, is the basis of my statement. I began with these cases in November, 1871, but, although devoting my time almost exclusively thereto, I only began to understand the Morse inventions and their relations to the art after more than four years of almost exclusive devotion thereto—that is to say, from November, 1871, up to the time when I began to prepare the petition which was filed in the Court of Claims, case known as No. 10270—and I was still engaged in experiments nearly to the end of my term in connection with the

cases, about twelve years from the time I took the matter up, in 1871, and, so far as I know, there is no one now living except myself who is at all competent to aid and qualify counsel up to the stage and point where I went out of the cases and some one else took charge.

As to what has been done in the Court of Claims cases since that time—that is, during the last twelve or fourteen years—I know practically nothing, having had nothing whatever to do with the cases during that period. The policy adopted when I went out of the cases was against my judgment, and others were put in charge for that reason, with the results existing to-day, which amount to progress backward rather than forward for the last fourteen years. All this, with resulting complications, it would take me many months to adequately master, as they practically involve a restudy of the entire art. I am, therefore, not qualified to take up the case as it stands, as an expert, or to train others to deal with the case which has been made on these new lines; and requiring months to thus qualify myself, I am unable, for a variety of reasons, to undertake to do so.

If, however, the continuance is granted, I believe that during the vacation such steps may be taken as will prevent the necessity of laborious preparation on the part of counsel, and even eventually relieve the Court from the burden of dealing with this, one of the most complicated cases, so far as inventions are concerned, that ever came before it. The petition I filed, No. 10270, was based on contract. Practically this petition was based on infringement, and brings in nearly every invention in breech-loading arms, impliedly or directly.

It is no small part of the complication of the present situation that through the procrastinations of the Solicitor General's office during the past twenty years the one man who, knowing his own, understood the inventions better than any other—that is, Morse himself—has died, leaving his wife an aged widow, his daughter an invalid, both without male protectors or males in the family of an age and opportunity to render adequate assistance.

In view of the internal situation of the company appellant, Mrs. Morse and Miss Morse are or will become the real parties in interest; and yet, encumbered with debt, they are actually without means to live from day to day, to say nothing of means to prosecute a litigation in the Supreme Court of the United States, while the Government is spending millions for guns that are the creation of the genius of Morse and are deemed necessary for the defense of this great nation.

When I first took up these cases Mr. Morse and his family were in such a condition of poverty and distress, although brought up in luxury and elegance, that, according to the evidence produced in the extension cases, mother and daughter had but one dress between them fit for public and outdoor service, and when one went out the other had to remain within. In addition, Mrs. Morse, whose family was of the highest standing and wealth in Louisiana, had been compelled to go into the fields and cultivate cotton with her own hands and labor, in order to furnish adequate supplies for her family, everything in reach of their once large possessions having been sold off or destroyed; and it was in that condition that Mr. Morse commenced in 1870, and renewed his efforts in the latter part of 1871 and

1872, to obtain extensions of his letters patent, the last under my advice and with my aid, and, as stated in the affidavit, under an act of Congress approved by General Grant.

It seems to be my further duty to present to the Court some facts showing the kind of persons with whose rights they are dealing, in order that the Court may judge properly whether as a part of the Government it would be justified in refusing this continuance, after the Government had been continuing and continuing for a generation, until original patents, extensions, and life itself had come to an end. When Mrs. Morse married Mr. Morse she was the widow of a United States Army officer, who died in the service, and whose ancestors had served the Government in both the Army and the Navy for many years; and as to her own lineage, it was her own father who, in the great days of Aaron Burr, Blennerhassett, and the Louisiana purchase, had charge of the interests of the United States in taking and maintaining possession of that part of the continent, and it was a lady of her family who, with her own hands, first drew to the top of the flagstaff and flung to the air the United States flag, thereby typically bringing that purchase into the Union and under the Constitution and laws of the United States.

As to the subject-matters of these claims, the Morse inventions, their history has been interwoven with the history of the country from 1856 or '57 and cannot be eliminated therefrom, so far as the past is concerned, but are apparently destined, as much as the work of any other man, to have in the future to do with the preservation of the United States Government. As early as 1858 they were the cause

of a controversy in the Senate, which it is believed then sat in the chamber now occupied by the United States Supreme Court, between Jefferson Davis and Judah P. Benjamin, which for days it was expected would end in a duel likely to be fatal to one of the parties—a controversy that might have affected the history of the United States in important respects. If the Morse inventions had not been suppressed by the United States Ordnance Department during and throughout the war, the Morse inventions might have made the war more short, sharp, and decisive, but might have saved life and treasure and many other things beyond calculation. But, on the other side and in still further negative form, Mr. Morse and his inventions did have directly to do with the preservation of the Union in this way: Soon after the surrender of Fort Sumter Mr. Morse was offered the command of the Fayetteville arsenal, in North Carolina, with authority to make his guns for the Confederate army, at a time when the tools and plans for making his rifle, that had been removed from Harper's Ferry, were within the control of the Confederate authorities and might have been turned over to him for the manufacture of arms at Fayetteville. Later these tools were placed in the control of Mr. Morse and remained in his control till the end of the war. It is in evidence in the extension cases, and a matter of knowledge in the possession of the Government, that no arm of the type invented by Mr. Morse was ever found on any one of the Southern battlefields, according to the testimony of the armorers, mechanics, and machinists of the Washington arsenal and Springfield armory, who not only knew Mr. Morse, but were familiar

with his inventions, and had with dread expected that soon after the beginning of the war the Morse guns would be used by the Confederate soldiers, but testified that it was a subject of conversation and wonder expressed between them, when the arms were gathered in from the different battlefields, and particularly from the battlefields of Gettysburg, that nowhere among the thousands of arms gathered up did they find a single gun of the Morse type. It will be said by the Solicitor General that after the surrender Morse arms were captured in South Carolina, and that specimens of those arms are now in the Solicitor General's possession. Such, at least, is the fact, and admitted; but those arms were made expressly, under contract, for use by the Home Guard, composed mostly of aged men, for the protection of women and children, in a portion of the State of South Carolina, from marauders and criminals, and were not intended for use and never were used against the United States Government or its soldiers.

It is impossible to go into full detail here, but the Morse principle has been dramatic not only from birth, but from and in its conception even, and seems to be destined to be so to the end, if its end ever comes.

Mr. Morse found refuge and rest from the persecutions and neglect of the United States Government in the grave nine years ago; but his ideas in the field of invention are marching on, and will continue to march on until wars cease and the millennial reign comes. The armies of all Europe are armed with guns the essential principle of which is the idea and invention of Morse, as set forth in the patents involved in this controversy, and the European civilizations that eventually prevail, both on land and on sea, will

owe to him a debt which they can never pay and seemingly may never recognize. The Morse idea is also marching on, in, through, and around the entire continent of Africa, carrying civilization with it, or at least behind it, wherever it goes. The same is true wherever civilization of the present type is advancing thoughout the world. And in our own country only two years ago, in the city of Chicago, the authority of the courts of the United States being overthrown in the persons of its marshals and in the State militia called to their aid, it was only when the United States troops appeared and were located by General Miles with such admirable skill on the lake front that the United States court began again to receive proper and accustomed respect.

It happened that almost if not quite in the last train that passed eastward from Chicago out of the jaws of that strike, that were at the moment closing and shutting off communication, I was a passenger. It also happened that I returned as a passenger to Chicago before the strike was over, to find General Miles with his small force of United States troops, occupying the lake front and making the Art Building, where the International Congresses had met in 1893 to exhibit to the world the glory and perfection of the American civilization, his center and possible citadel, still held the mob at bay. Going among the soldiers and taking particular pains to examine their arms, it became evident to me, as an expert, that every implement of the nature of a fire-arm—whether carbines, pistols, muskets, gatling guns, or rapid-fire guns—contained as the controlling, dominant factor, the Morse principle. And clearly, to one who knew the history of the breech-loading fire-arm,

it was the dead and unknown Morse and his idea that overawed the mob, protected the court, its judges, officers and process-servers, and the city, and prevented a great disaster and a great destruction of human life.

Under this state of facts and condition of affairs, can the United States Government, as represented by its law officers or by its courts, low or high, afford to be harsh or exacting or to prevent all further effort on behalf of Morse, his widow, his daughter, his descendants, and his own fame with the present and future generations?

As a citizen jealous of the reputation of my country for justice and righteousness, having learned the early history of the imperial implement from and through its inventor and creator, I gave about twelve years of wretchedly unremunerated service to Mr. Morse and his inventions in order to aid in so informing the Government as to make impossible of continuance a great wrong to one of the greatest inventors of this great inventive age; and after so many years more, I have returned to my place, under very trying circumstances, rather as the friend of the Court than as the attorney, either of the Morse Arms Manufacturing Company, or of the inventor's aged widow, or of his sick daughter, to plead briefly once more for justice and right in this behalf; and, having done my duty to the best of my ability and strength, I turn these two women over to the tender mercies of this Court, with confidence that they will receive due protection and will not be violently cut off from the further prosecution of their rights.

And yet, knowing that these two women are at this moment suffering in such a way that their constant prayer is for death to come to their relief, I am not at all certain

that if the Court could by its refusal to grant this motion bring these women to execution and to the termination of their lives and their struggle, it might not work the least suffering and harm to them in the end; but I am not willing to become the instrument of heroic surgery and act the part of executioner, nevertheless.

I am informed that on his death-bed Mr. Morse, in expressing his last wish, pledged his wife and daughter to continue the struggle to vindicate his reputation and fame as the inventor of the modern breech-loading arm to the end; and having an inheritance of gallant blood in their veins from ancestors who for generations have served the United States Government in arms, I have no doubt they will maintain the struggle so long as life lasts. But having done my part as well as I know how, I can only leave to the Court the final responsibility and opportunity, with full confidence that it will decide justly in the matter of this motion, which, although only a motion, must, if denied, bring this litigation to a close with what will be equivalent to an adverse judgment, though without argument on the merits, since it will compel me to ask that this appeal be dismissed, which, as I understand, must be done under the rule laid down in the legal-tender case, 9th Wallace; and in that event, such is my sense of the obligations imposed upon me by the strange circumstances that have brought me back and put me in charge of the Morse claims again, that in the execution of my trust I shall, if life and strength permit, appeal this case to the still higher courts of God and History.

JAMES A. SHILTON,
Counsel for Appellant in this Motion.

Supreme Court of the United States.

OCTOBER TERM, 1895.

THE MORSE ARMS MANUFACTURING COMPANY

v.

THE UNITED STATES.

No. 169.
Motion.

The Morse Arms Manufacturing Company, Appellant.

Now comes the appellant, by its attorney, and moves the court to postpone the hearing in this case, or a continuance, until the next term of the Court.

This motion is based on the death of Samuel A. Duncan, the counsel of the company, who argued the case below and was prepared to argue this appeal, and the facts set forth in the accompanying affidavits.

JAMES A. SKILTON,
Attorney for Appellant in this Motion.

DISTRICT OF COLUMBIA, *ss:*

James A. Skilton, being duly sworn, deposes and says that he resides in Brooklyn and has his office in the city of New York, and has been retained by the appellant for the purpose of making this motion.

The original claims upon which the petition filed in the Court of Claims in this case was based, were for the mak-

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DISTRICT OF COLUMBIA, *ss:*

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The original claims upon which the petition filed in the Court of Claims in this case was based, were for the mak-

ing and using of certain inventions in breech-loading guns and cartridges made by one George W. Morse, for which he obtained certain letters patent of the United States in the years 1856 and 1858, which inventions were, on invitation and request of an authorized official of the Government, submitted by the said George W. Morse, in the years 1857 and 1858, to certain boards, composed of ordnance officers of the Government, at West Point, together with inventions in breech-loading guns made by other inventors, in competition. The board of 1858, although authorized by Congress to "select and approve a model" for breech-loading gun and cartridges for adoption by the Government, declined to select and adopt a model, but selected the Morse invention and model for the purpose of submission to the test of use "by troops in actual service," because the "Morse model included a new and untried principle." Whereupon the Secretary of War solicited and was given a license to make and use 2,000 muskets under the said patents of the said Morse for the total sum of $10,000, being at the rate of $5 per musket, and later another license to make and use 1,000 carbines for the sum of $2,500, the total amount received by said Morse therefor being $12,500.

The making of these muskets and carbines was entered upon at the Springfield and Harper's Ferry armories, and proceeded under the general supervision of the said Morse, and upon plans and models furnished by him, from which drawings and tools for both muskets and carbines were made, and accepted by the proper Government officials, but with constant modifications and delays made by Government officials and in the armories, so that when the war of the rebellion began, in April, 1861, no arms had been completed or tested, and all further attempts to complete and test by the Government were abandoned by it until July of 1866, when Secretary Stanton ordered the alteration of

25,000 rifled muzzle-loading muskets into "breech-loaders of the best pattern," which was done by adopting the Morse inventions, but in an inferior way, in the absence and without the knowledge of the said Morse, and with results only partially satisfactory. Later, and by following more carefully the plans and instructions of the said Morse previously given, the arm known as the Springfield breech-loading rifle musket was made at the Springfield armory, with suitable cartridges, put into the hands of troops in service, and reports from the field being made thereon, was submitted to the ordnance board of 1873, and was by that board approved and adopted, the arm and the cartridges therefor being in every minute particular like those invented and patented to the said Morse, except as to the minor feature of the form of the latch that locked and held the breech piece in place.

Meantime, during the war, modified forms and adaptations of the Morse inventions had been contrived and made by private parties and companies and forced into the hands of the troops by the people, and accepted by the Government. Some of them were in the hands of the troops under Sheridan at the finish at Appomatox, and contributed greatly to the final result. Later the said 1856, 14-year patents of the said Morse expired, extensions thereof having been refused on the ground that Mr. Morse had been South, where his home and all his property were, during the war, without explanation.

In 1871–'72, under an act of Congress approved by President Grant, said Morse renewed his applications for extensions, on the ground of want of adequate recompense for his invention, and obtained the extension of the three important patents out of five, including those of 1858. After the adoption of the Springfield arm, in 1873, efforts were made to secure compensation for the use of the Morse

inventions therein, but failed for want of authority in the Ordnance Office and War Department to pay, and in February, 1875, the first petition of claim was filed in the Court of Claims (December term, 1874, No. 10,270), and under an order of the court a record, showing what had transpired and been done by and between the said Morse and the War Department, was produced and put in evidence on behalf of Morse, to which reference is hereby made, in printed copy herewith, in confirmation of the facts stated herein. Copy is marked Exhibit A, James A. Skilton, April 13, 1896.

Soon after, it is believed as early as 1876, the case was entered upon the trial docket and pressed for hearing year after year for many years, under this and other petitions, in vain, until the hearing below in this case.

Among counsellors and attorneys retained and engaged on behalf of the petitioner during this period were ex-judge of the U. S. S. court B. R. Curtis, Benjamin F. Butler, of Boston, ex-Judge Emott, of New York, Fisher and Duncan and Thomas J. Durant, all deceased, of whom all but one, Samual A. Duncan, died before the case could be brought to a hearing. Mr. Duncan had been retained and occupied in and about the various proceedings and litigations of these patents, in the Patent Office and elsewhere, with intervals, from May, 1871, to a day late in the year 1895, when he also died, leaving no available counsel thoroughly informed and competent, whose services could be obtained by the appellant, to argue this appeal at this term of the Court.

Meantime, practically the entire state of the art in all lands and in all time since the invention of gunpowder had been brought into the case, showing, indeed, a complete record of futility and failure in all previous inventions, and none of them in practical use, but requiring the most exacting studies, often with experiments, and the highest qualities of expert talent, to be acquired only by long preliminary train-

ing, to explain each one of the long list of them, and show why they failed, and why Morse succeeded, in closing the breech joint by the use of fixed-ammunition cartridge cases loaded with powder and ball, and primed.

And further, after devoting nearly forty years of his life to the perfection of the imperial and supreme war implement of this age, and, prospectively, of the ages to come, Mr. Morse himself joins the procession of his counsel to the grave, in poverty and want, leaving those dependent on him to the tender mercy of a Government he has so long faithfully served at its own request, to be paid chiefly by cruelty, injustice, and neglect.

Still further, notwithstanding the fact that the Ordnance Bureau asked to have the record on behalf of the petitioner in case No. 10,270, December term, 1874, Court of Claims, printed in excess of the usual number, to the extent of many hundreds (copy of which has been made an exhibit herein), to be used as an ordnance publication for distribution throughout the land and abroad in order to show that it should have the credit of assisting to bring out the modern breech-loader, because of what it did in making use of, and testing or experimenting with the Morse inventions, another branch of the Government, the Attorney-General's office, not familiar and not qualified in the subject-matter as is that Bureau, seeks to follow this great inventor—upon whose inventions the Government has already had to depend, even to protect and sustain its courts, as in Chicago in 1894, and will hereafter have to depend very likely for the continuance of its own life and its own survival—into and beyond the grave with a malignant and untiring purpose to take from him even the name and fame that are his due in history.

There is, in fact, in this case a greater issue than that of a money claim or a claim for the honor of making an imperial invention. That question is whether this government

of the people, by the people, and for the people is competent and honest enough to deal justly with one of the people who has rendered to it and to civilization a supreme service, sought in vain to be rendered by many other inventors, until now and here, in our day, the great feat has been achieved in the inventions of Morse now before the court.

It is indeed now claimed and held by the Government that the modern breech-loading gun was invented and made in Europe by others, and not in America by Morse. But no such European gun has been produced, nor has any witness been produced who has ever seen or tested any such gun. And it is matter of universal public knowledge that the first use of the modern breech-loader by European troops was by the French, late in the war with Germany, after Sedan, and consisted in the use of arms sold by the Ordnance Bureau to the French through the Remington agent, and for which the Bureau made the cartridges expressly. Althongh the fact is not so publicly well known, it is known to deponent, through information given to him by the official head of the Bureau at the time of the "French arms scandal," that the guns so sold and used were of the 25,000 ordered by Secretary Stanton in 1866, and injured in the making, as above stated, but which contained the Morse inventions. Later these same guns became the models and instructors of all European nations, whose troops are now, and since that time only have been, armed with breech-loaders, made on what the West Point board of 1858 called the "Morse principle," which it mentions at that time as "the new and untried principle of a primed metallic cartridge," p. 152.

It is confidently believed and urged that there is on record no such monstrous history of injustice and wrong on the part of any Government toward any inventor and imperial

invention, as can be found in the history of the dealings of this Government for the past forty years with Mr. George W. Morse and his inventions. And a half dozen, more or less, of laboriously trained and eminent counsel having gone hence during the last twenty-five and more years of tyrannical procrastination on the part of the defendant, it is urged that the appellant, representing Mr. Morse and his inventions, should not be now crowded to the wall by being forced into a hearing in the absence of qualified counsel to protect its rights. And it is so urged for the very reason that it would be a too fit and logical ending of at least twenty-six years of cruel injustice inflicted on an inventor meritorious in the very highest degree. James A. Skilton

Subscribed and sworn to before me this 14th day of April, 1896.

~~JAMES A. SKILTON.~~

A. S. Taylor
Notary Public.

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In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE MORSE ARMS MANUFACTURING Company, appellant, *v.* THE UNITED STATES. } No. 169.

APPELLEE'S OBJECTIONS TO APPELLANT'S MOTION FOR A CONTINUANCE.

The motion for a continuance, recently made by appellant's counsel in this case, is based on the death of Samuel A. Duncan, a former counsel in this case. This event occurred on or about October 20, 1895, since which time nearly six months have elapsed, ample time within which to secure counsel and have the case prepared for argument.

On March 6, 1896, appellant's counsel asked to have the Morse Case passed, if reached on the call, adding, "I have a plan *for disposing of the case*, which I wish to submit in person." (See Exhibit A.) In consequence of this request, the case was on March 17 passed on appellee's motion, subject to reinstatement under the

26th rule, appellant's counsel joining in a request, filed with the clerk, that the case be restored to the call on the 13th instant.

On the 8th instant, in a letter stating that he was the appellant's attorney for the first ten or twelve years, appellant's connsel again expressed a desire "to propose a plan for dealing with the case, which I think will be entirely satisfactory to you, *without a hearing before the United States Supreme Court.*" (See Exhibit B.)

The affidavit of appellant's counsel shows that he is fully master of the facts in this case, as might be expected from his having been counsel therein for the first ten or twelve years, and hence, if he has neglected to prepare for the coming argument, he is without excuse. It seems, however, from his letter of the 8th instant, that he does not desire any hearing of this appeal at all, and hence, we submit, this motion, if granted, can only lead to delay, without affecting the ultimate disposition of the case.

The case has already been delayed, in deference to the request of claimant's counsel, and we submit that no substantial reason is shown for any further delay. Appellant's counsel should either file his brief and argue the case, or he should allow it to be submitted on the appellee's brief, or he should withdraw the appeal.

CHARLES C. BINNEY,
Assistant Attorney,
HOLMES CONRAD,
Solicitor-General,
For Appellee.

EXHIBIT A.

NEW YORK, *March 6, 1896.*

SIR: I have just been retained in the Morse Arms Case. At the same time I am served with a notice to attend the taking of testimony in a case in Missouri on the morning of the 12th instant, and my relations to the case are such that I can not substitute another attorney in my place.

From the state of the calendar, I presume the Morse Case will be called during the coming week, if not early in the week. I have to start for Missouri on Tuesday, and can not, therefore, easily reach Washington in person to arrange for a disposition of the case before going West. I hope to be back by the 16th. Have you any objection to holding the Morse Case, if it is called, until I can see you, between the 16th and the 20th? Please let me know by telegram to-morrow, and also by letter on the same date. I have a plan for disposing of the case which I wish to submit in person.

Respectfully, yours,

JAMES A. SKELTON.

Hon. HOLMES CONRAD,
Solicitor-General, Washington, D. C.

EXHIBIT B.

NEW YORK, *April 8, 1896.*

SIR: In reply to your letter of April 6: I have been disabled with grip since I last wrote you, and have therefore been delayed in completing my plans for dealing with the case of the *Morse Arms Manufacturing Company* v. *The United States*, No. 169, as expected.

I was the attorney for the Morse Arms Company for the first ten or twelve years, but have not approved of the method of dealing with the cases that has been followed during the last ten years.

I expect to be in Washington on Friday morning, and to call upon you in person, prepared to propose a plan for dealing with the case, which I think will be entirely satisfactory to you, without a hearing before the United States Supreme Court. I regret that I have been unable to do this at an earlier date, as originally intended.

Respectfully, yours,

JAMES A. SKELTON.

Hon. HOLMES CONRAD,
Solicitor-General, Washington, D. C.

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